

Election With Traverse

Applicant hereby elects to prosecute the invention of Group I, and traverses the requirement.

Specifically, in the Office Action, it was stated that Group I was related to Groups II-IV as product and process of use, and that they can be shown to be “distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. (MPEP § 806.05 (h)).” Office Action, pgs. 2-3. It was stated that the product can be used for a materially different process of using it, “such as in the production of porphyrin compounds”. Office Action, pg. 3. It was also alleged that the claimed inventions of Groups I and II-IV have acquired a separate status in the art as shown by their different classification. Thus, it was concluded that restriction for examination purposes was proper.

It was admitted that Groups II-IV are related methods because they all use the cells of Group I. Nonetheless, it was asserted that these methods are distinct “due to their distinct method steps using different reagents to produce wholly different products”. *Id.* The distinctness is allegedly evidenced by distinct classifications. It was concluded that Groups II-IV are patentably distinct from each other, and the restriction for examination purposes was proper. *Id.*

Applicants submit that the claimed cells of Group I are related to the methods of Groups II, III and IV. Accordingly, it is respectfully submitted that the conclusion that the

claimed cells define a different and distinct invention than the methods of Groups II-IV is improper.

Moreover, it is submitted that the claims of the designated groups have not necessarily acquired a separate status in the art for examination purposes, notwithstanding possible different art classifications which may have been artificially assigned thereto in the U.S. Patent and Trademark Office. Art very relevant to the patentability of the cells (Group I), might very logically be found in the art classes assigned to the method claims (Groups II-IV). The classification cited in support of the election requirement is merely used for cataloging purposes and it is not conclusive of the propriety of such a requirement. It is further submitted that an important advantage in pursuing just one application encompassing both, the cells and the method claim groups is that the examination work of the Patent Office would be simplified, insofar as duplication of searching effort would be eliminated.

In view of the above remarks, it is thus respectfully requested that the restriction requirement be withdrawn and that all claims be allowed to be prosecuted in the same application. In the event that the requirement is made final, and in order to comply with 37 C.F.R. § 1.143, Applicants reaffirm the election of claims 1-17 (Group I), holding claims 18-33 (Groups II-IV) in abeyance under the provisions of 37 C.F.R. § 1.142(b) until final disposition of the elected claims.

CONCLUSION

Applicants respectfully submit that the application is in condition for allowance and respectfully request a notice of allowance for the pending claims. Should the Examiner determine that any further action is necessary to place this application in

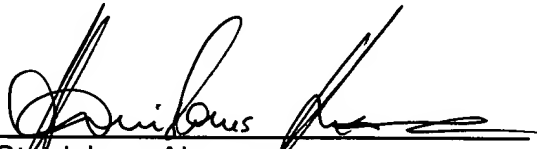
condition for allowance, the Examiner is kindly requested and encouraged to telephone Applicants' undersigned representative at the number listed below.

It is believed that no fees other than the extension of time fee, are due in connection with this response. However, if any additional fees are determined to be due, the Commissioner is hereby authorized to charge these fees to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

HUNTON & WILLIAMS

Date: October 11, 2002

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